

HONORABLE RICARDO S. MARTINEZ

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TONY SCHULTZ, individually, and on behalf  
of a class of others similarly situated,

Plaintiffs.

v.

UNITED AIR LINES, INC., a Delaware  
corporation d/b/a UNITED AIRLINES,  
NORTHWEST AIRLINES, INC., a Delaware  
corporation; and DELTA AIR LINES, INC., a  
Delaware corporation,

Defendant.

**Case No. 2:10-cv-01263-RSM**

**SECOND AMENDED COMPLAINT –  
CLASS ACTION**

**JURY TRIAL REQUESTED**

1 Plaintiff TONY SCHULTZ (“Plaintiff” or “Schultz”), individually and on behalf  
2 of all others similarly situated (“Plaintiffs”), by and through his counsel, for his Complaint  
3 against Delta Air Lines, Inc. (hereinafter “Defendant” or “Delta”), hereby states and alleges as  
4 follows:

5 **I. INTRODUCTION**

6 1. Following American Airlines’ lead in 2008, Delta, in pursuit of increased  
7 revenue, began charging all domestic travelers a fee for the handling and transportation of  
8 passengers’ bags to their destinations.

9 2. When Delta completed its merger with Northwest Airlines, Inc. (the combined  
10 entities are referred to herein as “Delta”) in October 2008, it became the largest airline carrier in  
11 the world.

12 3. Upon information and belief, on September 26, 2008, Delta and Northwest  
13 Airlines, Inc. announced shareholder approval merging the two entities. On October 28, 2008,  
14 the Department of Justice granted final regulatory approval of Delta’s acquisition of Northwest  
15 Airlines, Inc. On December 31, 2009, Northwest Airlines, Inc.’s operating certificate expired.

16 4. Before the close of 2008, Delta implemented a baggage charge on all domestic  
17 flights in the United States.

18 5. For example, on domestic flights in the United States (including flights to, from,  
19 and between Puerto Rico and the U.S. Virgin Islands), Delta in 2009 charged passengers a fee of  
20 \$15 for the first bag checked and \$25 for the second bag checked.

21 6. Along with Delta’s imposition of these new baggage fees came its obligation to  
22 handle passenger baggage with care and deliver it to the passenger’s ultimate destination with the  
23 passenger.

24 7. Delta breaches its agreements with passengers each time it damages, delays, or  
25 loses baggage and fails to refund the baggage fee to the affected passenger.

1           8.       Although loss or delay of some baggage may be unavoidable, Delta is not entitled  
2 to retain the baggage fee collected from passengers whose baggage it has lost, damaged, or  
3 delayed.

## 4                                   **II. JURISDICTION AND VENUE**

5           9.       This Court has subject matter jurisdiction based on the Class Action Fairness Act,  
6 28 U.S.C. § 1332 (d)(2).

7           10.      Delta routinely conducts business in Washington State and with the residents of  
8 this jurisdiction. Representative Plaintiff is a resident and citizen of King County, Washington.

9           11.      Upon information and belief, Delta is a Delaware corporation and conducts  
10 business in the State of Washington and nationwide.

11          12.      The amount in controversy exceeds \$5,000,000 when the claims of the class  
12 members are aggregated.

13          13.      According to the Department of Transportation ("DOT"), Delta mishandled  
14 29,800 bags in October 2009.

15          14.      A refund of all baggage fees charged to affected class members during the statute  
16 of limitations would far exceed the jurisdictional requirements of CAFA.

17          15.      Venue is proper in this action under 28 U.S.C. § 1391(c).

## 18                                   **III. GENERAL ALLEGATIONS**

19          16.      Delta is a United States airline carrier in the business of providing commercial  
20 passenger service throughout the United States and the world.

21          17.      In 2008, American Airlines began charging passengers for the handling and  
22 delivery to a set destination of all baggage passengers checked with the airline.

23          18.      Certain other airlines rebuffed the trend of implementing baggage charges.

24          19.      Within months, however, Delta followed American's lead and established nearly  
25 identical charges for passengers' checked bags.

1           20.     At airports across the country, at Delta's sole direction and undertaking, personnel  
2 began representing to passengers that a fee was now required to ensure the timely delivery of  
3 their checked baggage.

4           21.     Delta charges its checked baggage fees separate and apart from the amount  
5 already charged for the passenger's airline ticket.

6           22.     Delta's imposition of fees was not by state or federal mandate, but was done on its  
7 own initiative.

8           23.     Delta's website, under the title of CUSTOMER COMMITMENT, concedes

9                   **3. Delivering baggage on time**

10                   It is our intention to deliver your baggage on time. However, in the event  
11                   that this does not occur, we will strive to return your misplaced baggage  
12                   within 24 hours.

13                   ([http://www.delta.com/legal/delta\\_customer\\_commitment/index.jsp](http://www.delta.com/legal/delta_customer_commitment/index.jsp))

14           24.     Delta's checked baggage fees are charged in the context and commercial setting  
15 of a passenger and airline contracting for passage to a set destination.

16           25.     A passenger wishing to transport baggage with him or her on the same flight must  
17 pay a checked baggage service fee. Thus, Delta offers to passengers a baggage transportation  
18 service, whereby the airline will transport the passenger's bag, along with the passenger, for an  
19 additional charge of \$15.

20           26.     Once the consideration (baggage fee) is paid for the additional designated  
21 baggage service, the baggage is taken into the sole custody and control of the airline.

22           27.     Given the parties' actions, conduct, and representations, and the commercial  
23 setting, it is axiomatic that the baggage service fee is for the service of transferring the baggage,  
24 with the passenger, to the agreed location free from harm.

25           28.     Notwithstanding the parties' intent and mutual assent, Delta loses, damages,  
26 destroys, and/or delays the delivery of a large percentage of bags each day on flights within, and  
27 originating from, the United States.



1           39.     The class satisfies the numerosity standards. The class is believed to number in the  
2 thousands of persons. As a result, joinder of all class members in a single action is impracticable.

3           40.     Delta is in exclusive possession of the exact number of the class and such discovery  
4 should be provided immediately. Class members may be informed of the pendency of this class  
5 action through direct mail.

6           41.     There are questions of fact and law common to the class, which predominate over  
7 any questions affecting only individual members. The questions of law and fact common to the  
8 class arising from Delta's actions include, without limitation, the following:

9  
10                   (1) Whether Delta breaches its agreements with passengers from whom it has  
11 collected a baggage fee each time it fails to timely deliver the baggage to  
passengers, free from damage, at the agreed-upon destination.

12                   (2) Whether Delta breaches its agreements with passengers from whom it has  
13 collected a baggage fee each time it damages or destroys the baggage.

14                   (3) Whether Delta is obligated to refund the baggage fee charged to class  
15 members each time it fails to timely deliver the baggage to passengers, free  
16 from damage, at the agreed-upon destination.

17                   (4) Whether Delta is obligated to refund the baggage fee charged to class  
18 members each time it damages or destroys the baggage.

19                   (5) Whether Delta has been unjustly enriched by retaining the baggage fees when  
20 it does not deliver the baggage with the passengers.

21           42.     The questions set forth above predominate over any questions affecting only  
22 individual persons, and a class action is superior with respect to considerations of consistency,  
23 economy, efficiency, fairness and equity, to other available methods for the fair and efficient  
24 adjudication of Plaintiff's claims.

25           43.     Plaintiff's claims are typical of those of the class in that he was charged a baggage  
26 fee and was not refunded the fee even though his bags failed to arrive with him at his destination.

27           44.     A class action is the appropriate method for the fair and efficient adjudication of  
28 this controversy. Delta has acted or refused to act on grounds generally applicable to the class.

1 The presentation of separate actions by individual class members could create a risk of  
2 inconsistent and varying adjudications, establish incompatible standards of conduct for Delta,  
3 and/or substantially impair or impede the ability of class members to protect their interests.

4 45. Further, Delta has failed to take action as required under common law, on grounds  
5 applicable to the class, thereby making appropriate final injunctive relief or corresponding  
6 declaratory relief as respect to the class as a whole necessary and appropriate.

7 46. Plaintiff is an adequate representative of the class because he is a member of the  
8 class and his interests do not conflict with the interests of the members of the class he seeks to  
9 represent. The interests of the members of the class will be fairly and adequately protected by  
10 Plaintiff and his undersigned counsel, who have extensive experience prosecuting and defending  
11 complex class-action litigation.

12 47. Maintenance of this action as a class action is a fair and efficient method for the  
13 adjudication of this controversy. It would be impractical and undesirable for each member of the  
14 class who suffered harm to bring a separate action. In addition, the maintenance of separate  
15 actions would place a substantial and unnecessary burden on the courts and could result in  
16 inconsistent adjudications, while a single class action can determine, with judicial economy, the  
17 rights of all class members.

## 18 **COUNT I**

### 19 **Breach of Contract**

20 48. Plaintiffs reassert and re-allege the allegations set forth in the above paragraphs.

21 49. Beginning in 2008, Delta offered to transport Plaintiffs' checked bags in exchange  
22 for a fee.

23 50. Delta's baggage fee was in addition to the price the passenger paid for the airline  
24 ticket to transport the passenger to his or her destination.

25 51. Delta thus offered passengers an optional and separate service of transporting  
26 their baggage on their flights.

1           52.     Delta offered Plaintiff the option of checking a bag for a fee of \$15.00. Plaintiff  
2 accepted Delta's offer and was charged a fee of \$15.00 for the handling and delivery of his bag  
3 from Hawaii to Seattle, Washington.

4           53.     Upon acceptance of this consideration, Delta accepted Plaintiff's bag.

5           54.     Given the commercial setting and the parties' actions, conduct, and  
6 representations, a contract was formed between the parties that the checked baggage fee is paid  
7 for Delta's service of transporting the checked bag with the passenger on his or her flight, to the  
8 agreed location free from harm.

9           55.     Plaintiffs paid the baggage fee with the expectation, and intent that in exchange for  
10 the baggage fee Delta would not damage or destroy their checked baggage and would timely  
11 deliver it to the agreed-upon destination. In other words, Delta offered, and Plaintiffs accepted  
12 and paid consideration for the timely transportation of their baggage free from harm forming  
13 mutual assent and a contract.

14           56.     Upon information and belief, Delta did not provide any information to Plaintiffs by  
15 any means including posted signs, or information provided through Delta's representatives,  
16 which contradicted the parties' intent upon payment of the baggage fee. Therefore, there was no  
17 expressed representation that would lead any reasonable passenger to believe that Delta's  
18 baggage service still allowed the airline to destroy, damage, delay, or lose the passengers bag and  
19 earn the consideration it charged for its very transportation.

20           57.     Upon information and belief, Delta intended Plaintiffs to believe that the baggage  
21 fees were charged for the timely delivery of passengers' checked baggage that was not damaged or  
22 destroyed. Delta's website explicitly informs its passengers of its intent:

23                   It is our intention to deliver your baggage on time. However, in the event that this  
24 does not occur, we will strive to return your misplaced baggage within 24 hours.

25           58.     Plaintiffs reasonably believed – based on Delta's representations– that when they  
26 were required to pay a separate charge for the transportation of their baggage in addition to the  
27 price of the ticket, they were paying for the timely delivery of their checked baggage that was not  
28 damaged or destroyed.

59. Delta created the baggage fee, charged passengers the fee in addition to the price of an airline ticket, advertised the fee, posted the fee, and accepted the baggage fee as consideration from Plaintiffs as a self-imposed undertaking to timely deliver undestroyed and undamaged baggage to a passenger's destination.

60. Delta's conduct, actions, and representations all served to form this agreement with its customers.

61. When Delta permanently loses, destroys, or fails to timely deliver passengers' checked baggage, it breaches its agreement with its passengers by failing to perform the very service it was paid to perform.

62. Such a contract is formed under real law, both implied in fact, as well as by the express representations made by the parties.

63. Delta breached its agreement—under both state and federal common law—with Plaintiff, by failing to timely deliver his bags, and further breached its agreement with all other similarly situated Plaintiffs when it failed to deliver their bags free from damage or destruction.

64. Plaintiffs have suffered damages in an amount to be determined at trial, including, but not limited to, the amount of baggage fees accepted and retained by Delta for baggage it damaged or destroyed or otherwise failed to timely deliver to the agreed-upon destination.

**COUNT II**

## Unjust Enrichment/ Quasi Contract

65. Plaintiffs reassert and re-allege the allegations set forth in the above paragraphs.

66. Plaintiffs conferred a benefit upon Delta when they paid the baggage fees, and upon acceptance of the baggage fees Delta had knowledge of the benefit.

67. Imposition of these baggage fees enriched Delta and increased its revenue, as was its intention. Delta's acceptance of these fees imposed upon it an obligation to deliver the baggage, along with the passenger, to the agreed-upon destination, and to refrain from damaging or destroying the baggage. This obligation was self imposed with Delta's choice to create the baggage fee.



1 D. Order Delta to make Plaintiff and the other class members whole by providing  
2 compensation for past and future non-pecuniary losses resulting from the unlawful practices  
3 described in the above paragraphs, in amounts to be determined at trial.

4 E. Order Delta to make Plaintiff and the other class members whole by providing  
5 appropriate prejudgment interest, in an amount to be determined at trial, and other affirmative  
6 relief necessary to eradicate the effects of its unlawful practices.

7 F. Award Plaintiff and the other class members the costs of this action, including  
8 attorneys' fees.

9 G. Grant any additional or further relief as provided by law, which this Court finds  
10 appropriate, equitable, or just.

11 **VI. DEMAND FOR JURY TRIAL**

12 All Plaintiffs hereby request trial by jury of all issues triable by jury.

13 **VII. DESIGNATION OF PLACE OF TRIAL**

14 Plaintiffs designate Seattle, Washington as the place of trial.

15  
16 DATED: April 22, 2011

ONGARO BURTT & LOUDERBACK LLP

17  
18 By: /s/ David R. Ongaro  
19 David R. Ongaro, admitted *pro hac vice*  
20 595 Market Street, Suite 610  
San Francisco, CA 94105  
Telephone: (415) 433-3900  
Facsimile: (415) 433-3950

21 Attorneys for Plaintiffs  
22  
23  
24  
25  
26  
27

**CERTIFICATE OF SERVICE**

I am a citizen of the United States and a resident of the State of California. I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within entitled action. My business is 595 Market Street, Suite 610, San Francisco, CA 94105.

I hereby certify that on April 22, 2011 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

David M. Jacobson, Esq.  
Dorsey & Whitney LLP  
701 Fifth Avenue, Suite 6100  
Seattle, WA 98104

Attorney for Defendants Delta Air Lines, Inc., and Northwest Airlines, Inc.

Lauren K. Hemingway, Esq.  
Dorsey & Whitney LLP  
701 Fifth Avenue, Suite 6100  
Seattle, WA 98104

Attorney for Defendants Delta Air Lines, Inc., and Northwest Airlines, Inc.

Gavin W. Skok, Esq.  
Riddell Williams P.S.  
1001 Fourth Avenue, Suite 4500  
Seattle, WA 98154-1192

Attorney for Defendant United Air Lines, Inc.

Executed on April 22, 2011, at San Francisco, California.

/s/ David R. Ongaro  
David R. Ongaro